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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,934	11/13/2001	Ann M. Nichols	KCC 4729.1 (16,210.1)	8461

321 7590 05/13/2003

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST. LOUIS, MO 63102

EXAMINER

FOSTER, JIMMY G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 05/13/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/010,934

Applicant(s)
Nichols et al.

Examiner
Jimmy G. Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 1, 5, 6, 7, 6) ☐ Other:

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 8-11 and 13-18 are rejected under 35 U.S.C. § 102(b) as being anticipated by Trewella et al (3,338,019). In the reference of Trewella et al there is provided absorbent articles at the sterile surgical dressing/sponges 24/48/63/70. The articles are stacked (Fig. 3). In addition there is provided a package 11,12 which contains the stacked articles. The package is made of flexible sheet materials and therefore includes a flexible pocket. A flap of the package is provided by sheet 12,17 (or 55 or 65). The flap is releasably closed over the opening of the flexible pocket by seal lines 13 and 25 (or 59 or 68), which may be either heat seal or adhesive seal lines. The seal line 13,59,68 is spaced from the distal edge of the flap. This apparently permits the portion 17 to be grasped for opening the package (see Fig. 4). Although the lateral edges (25) of the flap portion 17 may also be sealed, the reference also describes an embodiment in which they are not sealed (see Fig. 9). The seal line (13) extends across the

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entire width of the package and therefore across the entire width of the flap.

Regarding claim 11 which calls for a two-sided adhesive tape, element 57 is adhesively attached to the portions of the package at opposite sides surfaces of the element 57 and therefore defines a two-sided adhesive tape. Accordingly, the flap 55 is adhesively attached by a two-sided adhesive tape over the opening of the flexible pocket 56,58.

Although the surgical sponges are disclosed as the articles packaged, such articles are capable of being used in the manner claimed by Applicant's claims 16-18 (although maybe not effectively as desired).

3. Claims 1, 4, 9, 14, 16 and 17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Jones (3,557,853). The package/holder 10 of Jones includes a flexible pocket 12,14,16,18 closed by a flap 22 with an adhesive closure 24,25 (see col. 1, line 73 - col. 2, line 2) which is spaced from a distal edge of the flap. The closure 24,25 defines an adhesive closure since each portion (24 or 25) is attached to the flap or pocket by adhesive. The package 10 is used for holding two sanitary napkins. Sanitary napkins are asserted to inherently function as panty liners.

4. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious

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at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 3 and 5-7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Trewella et al (3,338,019). Trewella et al disclose the general condition in which a flap of sufficient dimension is used for releasably closing a package and for being grasped so as to open said package. It has been held that discovering an optimum or workable value of a result effective variable/general condition involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Moreover, a mere change in degree and not kind is obvious, absent an unexpected result. See *In re Aller*, 105 USPQ 233 (1955). The relative position between the distal edge of the flap 17 (or other flaps disclosed) and the adhesive seal line of Trewella et al is already indicated by the reference as being spaced. Accordingly, to have made the spacing as a particular value of dimension, including that claimed by Applicant, would have been obvious as being a difference in degree and not kind or as discovering a workable value of a general condition of grasping a flap for opening a package, already disclosed by Trewella et al.

Likewise, the reference of Trewella et al already discloses a seal line 13, and such a seal line indicated in Figure 4 would inherently include some width for providing an openable adhesive seal. To have made the seal width dimension with any particular value, including any of the values claimed by Applicant, would have therefore been obvious as being merely

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a change in degree and not kind or as discovering a workable value for the general condition of releasable seal width that is taught by Trewella et al.

6. Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Trewella et al (3,338,019) in view of official notice that hot melt adhesive and its properties are known for sealing packages, wherein the sealing substance is permitted to be provided only at the seal instead of as a heat sealing packaging layer. The reference of Trewella et al suggests that the sealing of the disclosed package may be made by other conventional sealing techniques (col. 2, lines 54-57; col. 3, lines 3-7). Accordingly, it would have been obvious to have used any conventional sealing technique, including hot melt adhesive, for sealing the package of Trewella et al. And it would have been obvious to have done this where it is desired to apply the sealing substance only at the location of the seal instead of as a packaging layer.

7. For contacting the PTO by phone, the following contact numbers may be used:

For tracking of papers and association of papers with cases --
Customer Service. . . (703)306-5648

For matters regarding examination -- Examiner:
Jim Foster (703)308-1505

For faxing of correspondence:
DRAFT Fax amendments only-(703)308-7769
(Examiner should be notified of fax)

FORMAL Fax correspondence-(703)305-3579 or 305-3580

RIGHT FAX- Before Final . . (703) 872-9302
After Final . . . (703) 872-9303
(The examiner ordinarily will not retrieve
formal correspondence)

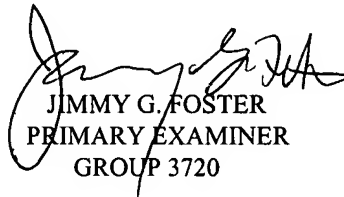
Serial Number: 09/713,496

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For petitions:

Before the Examiner . (703)308-1505
Before the Group Director . (703)308-3872
Other petitions . . . (703)305-9282



JIMMY G. FOSTER
PRIMARY EXAMINER
GROUP 3720

JGF
May 12, 2003